

June 9th, 1933

Mr. J. Prugh Herndon,
Assistant Comptroller,
University of Arizona,
Tucson, Arizona.

Dear Sir:

This will acknowledge receipt of your letter to the Attorney General of May 18th, in which you state further facts and seek further information relative to liability insurance upon buses owned and operated by the University.

Due to the complexity of this problem, it would be impracticable to undertake by letter to make a lucid distinction between those activities which are governmental functions and those which are not. There is no doubt that many, if not all, of the activities which the insurance policy in question purports to cover are governmental. This is a sufficient reason for canceling the policies and accepting back the premiums.

In your letter of April 27, you quoted the substance of a rider which is attached to or made a part of the policy in question. The Attorney General states in his opinion of May 5th that such rider has no legal significances. The theory upon which this statement is based is as follows: the State and its agencies are immune from liability in tort; such immunity is a perfect defense in tort action; a waiver of such defense (the rider) is tantamount to assuming liability; such liability cannot be assumed except by an act of the legislature. It is true that when a loss occurs the policy, especially when viewed together with the rider, places the insurance company under a moral obligation, but moral obligations are not enforceable in our courts.

Hoping that this gives you the desired information, I remain

Very truly yours,

Attorney General

PHB:H

Assistant Attorney General

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